

LLOYD J. MECHAM

IBLA 83-914

Decided June 6, 1984

Appeal from the decision of the Utah State Office, Bureau of Land Management, declaring portions of two lode mining claims null and void ab initio. U MC 255048 and U MC 255073.

Vacated and remanded.

1. Withdrawals and Reservations: Generally -- Withdrawals and Reservations: Effect of

Notation of a withdrawal application filed before Oct. 21, 1976, temporarily segregates the land from mineral location to the extent that the withdrawal, if effected, would do so. Under current regulations, the lands described in the withdrawal application, filed before Oct. 21, 1976, and still outstanding, remain segregated from settlement, sale, location, or entry under the public land laws to the extent specified in the Federal Register notice until Oct. 20, 1991.

2. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

A mining claim whose discovery is located on land segregated and closed to mineral entry by notation of receipt of an application for withdrawal is properly declared null and void ab initio.

3. Mining Claims: Lands Subject to -- Mining Claims: Location -- Mining Claims: Lode Claims

If the discovery on which location of a lode mining claim is based is on unappropriated land, exterior boundary lines may be laid within or across the surface of withdrawn or segregated land for the purpose of claiming that portion of the ground within the end lines and side lines of the claim which has not been withdrawn and securing extralateral rights to the lode deposit apexing within the portion of the claim subject to location.

APPEARANCES: Lloyd J. Mecham, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Lloyd J. Mecham has appealed from the decision of the Utah State Office, Bureau of Land Management (BLM), declaring portions of the Dark Canyon No. 40 and Lost Josephine No. 25 lode mining claims, U MC 255048 and U MC 255073, null and void ab initio because the land was segregated from mining location by recreation site application U-18809 filed May 1, 1972. BLM described the segregated land as the SW 1/4 SW 1/4 NE 1/4, E 1/2 NE 1/4 NE 1/4 SW 1/4, NW 1/4 NW 1/4 SE 1/4 sec. 26, T. 32 S., R. 10 E., and the NW 1/4 SW 1/4 NW 1/4 sec. 4, T. 33 S., R. 10 E., Salt Lake meridian, but did not specify what portions of the mining claims are in conflict.

Appellant located both claims on May 15, 1982, along with 53 other claims and thereafter timely filed copies of the notices of location and appropriate fees with BLM on June 7, 1982. In his statement of reasons, appellant argues that the recreation site application does not prohibit mining claims on lands subject to the application and challenges whether the application still has force and effect.

[1] On April 25, 1972, the Assistant Secretary for Public Land Management approved BLM's request to file an application for withdrawal from all forms of appropriation under the public land laws, including location and entry under the mining laws, but not from mineral leasing, 29 recreational sites encompassing about 1,674 acres of land in the Henry Mountain Resource Area of Utah. The purpose of the withdrawal was to protect the sites from activity which might damage or render the sites unsuitable for general public enjoyment. BLM posted the application for withdrawal, U-18809, to BLM's official records on May 1, 1972, ^{1/} and published a notice announcing the proposed withdrawal and requesting comments in the Federal Register on May 19, 1972. See 37 FR 10089-90. Under the regulations then in force, noting of the application in the official BLM records had the effect of temporarily segregating the land to the same extent that the withdrawal applied for would prevent disposal of the lands. See 43 CFR 2091.2-5 (1972). Under current regulation 43 CFR 2310.2(b), public lands described in a withdrawal application filed before October 21, 1976, remain segregated through October 20, 1991, to the extent specified in the Federal Register notice unless the segregative effect is terminated sooner. See 43 U.S.C. § 1714(g) (1982). Thus, BLM's decision is correct as to the segregative effect of application U-18809 on the lands specified for withdrawal. Such conclusion does not resolve this appeal, however.

[2, 3] The Board has recognized the following distinction. A locator may not locate a mining claim with a discovery on land not open to the operation of the mining laws; such claim is void ab initio. But, a locator whose discovery is located on lands open to location may extend the end lines and side lines of a lode mining claim across patented or withdrawn lands to define extralateral rights to lodes or veins apexing within the portion of the claim subject to location. Amoco Minerals Co., 81 IBLA 23 (1984); Marilyn Dutton Hansen, 79 IBLA 214 (1984); Santa Fe Mining Inc., 79 IBLA 48 (1984). This principle permits development of unappropriated minerals in irregular parcels of land in compliance with the statutory requirement for parallel end lines,

^{1/} See Historical Index for T. 32 S., R. 10 E., Salt Lake meridian, at page 3, and for T. 33 S., R. 10 E., Salt Lake meridian, at page 2.

30 U.S.C. § 23 (1982). The Hidee Gold Mining Co., 30 L.D. 420 (1901); see Del Monte Mining Co. v. Last Chance Mining Co., 171 U.S. 55 (1898). In a case such as this one, the segregation of the lands from mineral location prior to the location of the claims precluded the exercise of rights to either the mineral or the surface within the withdrawn lands. The only right which may be conferred upon appellant by reason of ownership of claims overlapping the segregated land is the right to use the exterior boundaries of the claim for the purpose of determining extralateral rights to ores and minerals outside the segregated lands. Amoco Minerals Co., supra at 28.

The map submitted by appellant clearly shows the two claims at issue overlapping the lands segregated by withdrawal application U-18809, but provides no information as to the discovery points for the claims. Our review of the notices of location for the claims and others recorded by appellant reveals that appellant's map is inconsistent with the locations for the Lost Josephine group of claims as described by metes and bounds on the location notices. For example, the location notice locates the Lost Josephine No. 25 claim at issue here considerably further to the east than indicated on appellant's map, and appears not to put it in conflict at all with the NW 1/4 SW 1/4 NW 1/4 sec. 4, T. 33 S., R. 10 E., Salt Lake meridian. With respect to the Dark Canyon No. 40 claim in sec. 26, it is described by mere reference to the cabin; therefore, we are unable to determine the claim's precise location. A comparison of appellant's map with BLM's township plat suggests that most of the Dark Canyon No. 40 claim, including the discovery point, may fall within the segregated area. However, given the other map inconsistencies, we are reluctant to draw such a conclusion. If the point of discovery, in fact, lies on the segregated area, the claim was properly declared null and void. If the point of discovery lies outside the segregated area but portions of the claim do not, the aforementioned rule regarding the efficacy of claims situated in part on segregated lands for the purpose of securing extralateral rights to lode deposits applies.

In the absence of sufficient information from which to judge whether the two claims at issue were properly held to be null and void ab initio, the decision below is vacated and the matter is remanded to BLM for appropriate action. BLM should not attempt to adjudicate the validity of partially projected lode claims, if that is what is involved, except in the context of a mining claim contest. Amoco Minerals Co., supra at 28.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Utah State Office is vacated and the case remanded.

Wm. Philip Horton
Chief Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Edward W. Stuebing
Administrative Judge

